

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 2, 2006

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting New Rules
Governing Suitability in
Annuity Transactions

CASE NO. INS-2006-00129

JUN 2 10 27

DOCUMENT CONTROL

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to adopt new "Rules Governing Suitability in Annuity Transactions" which are recommended to be set out at 14 VAC 5-45-10 through 14 VAC 5-45-50.

The proposed new Rules closely follow the National Association of Insurance Commissioners (NAIC) Model Regulation on the same subject. The proposed Rules are as a result of increasing reports of inappropriate sales of annuities to consumers of all ages.

The Commission is of the opinion that the proposed new Rules submitted by the Bureau of Insurance should be considered for adoption.

THEREFORE, IT IS ORDERED THAT:

(1) The proposed new Rules entitled "Rules Governing Suitability in Annuity Transactions," which are recommended to be set out at 14 VAC 5-45-10 through 14 VAC 5-45-50, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of the proposed new Rules shall file such comments or hearing request on or before September 1, 2006, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2006-00129.

(3) The Bureau shall hold at least one meeting during the comment period, in order for interested parties to address questions about the Rules to the Bureau. The first meeting shall be held on July 11, 2006 at 9:00 a.m. in the Training Room located on the 3rd Floor of the State Corporation Commission, 1300 East Main Street, Richmond, Virginia, with subsequent meetings to be scheduled as necessary.

(4) *If no request for a hearing on the adoption of the proposed new Rules is filed on or before September 1, 2006, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new Rules, may adopt the Rules as proposed by the Bureau of Insurance.*

(5) AN ATTESTED COPY hereof, together with a copy of the proposed new Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Jacqueline K. Cunningham, who forthwith shall give further notice of the adoption of the proposed new Rules by mailing a copy of this Order, together with the proposed new Rules, to all companies licensed by the Commission to sell annuities or variable annuities in Virginia.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(7) On or before June 9, 2006, the Commission's Division of Information Resources shall make available this Order and the attached proposed new Rules on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(8) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

CHAPTER 45

RULES GOVERNING SUITABILITY IN ANNUITY TRANSACTIONS

14 VAC 5-45-10. Purpose and scope.

The purpose of this chapter is to set forth rules and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. This chapter shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an agent, or insurer where no agent is involved, that results in the purchase or exchange recommended.

14 VAC 5-45-20. Definitions.

The following words and terms when used in this chapter shall have the following meaning, unless the context clearly indicates otherwise:

"Agent" or "insurance agent" means a person as defined in § 38.2-1800 of the Code of Virginia.

"Annuity" means a fixed, variable or modified guaranteed annuity that is individually solicited, whether the product is classified as an individual annuity or group annuity.

"Commission" means the State Corporation Commission.

"Insurer" means an insurance company required to be licensed under the laws of this Commonwealth.

"Recommendation" means advice provided by an agent, or an insurer where no agent is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

14 VAC 5-45-30. Exemptions.

Unless otherwise specifically included, this chapter shall not apply to recommendations involving:

1. Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this chapter;

2. Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 USC § 1001 et seq.);

b. A plan described by 26 USC §§ 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer;

c. A government or church plan defined in 26 USC § 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 USC § 457 of the Internal Revenue Code;

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

f. Preneed funeral contracts as defined in § 54.1-2800 of the Code of Virginia.

14 VAC 5-45-40. Duties of insurers and agents.

A. In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent or the insurer where no agent is involved, shall have reasonable grounds for believing that the

recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his investments and other insurance products and as to his financial situation and needs.

B. Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an agent, or insurer where no agent is involved, shall make reasonable efforts to obtain information concerning:

1. The consumer's financial status;
2. The consumer's tax status;
3. The consumer's investment objectives; and
4. Other information used or considered to be reasonable by the agent, or the insurer

where no agent is involved, in making recommendations to the consumer.

C. 1. Except as provided in subdivision 2 of this subsection, neither an agent, nor an insurer where no agent is involved, shall have any obligation to a consumer under subsection A of this section related to any recommendation if a consumer:

- a. Refuses to provide relevant information requested by the insurer or agent;
- b. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or agent; or
- c. Fails to provide complete or accurate information.

2. An insurer or agent's recommendation subject to subdivision 1 of this subsection shall be reasonable under all the circumstances actually known to the insurer or agent at the time of the recommendation.

D. 1. An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter is established and maintained by

complying with subdivisions 3 and 4 of this subsection, or shall establish and maintain such a system, including, but not limited to:

- a. Maintaining written procedures; and
- b. Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this chapter.

2. An agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this chapter, or shall establish and maintain such a system, including, but not limited to:

- a. Maintaining written procedures; and
- b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this chapter.

3. An insurer may contract with a third party, including an agent or independent agency, to establish and maintain a system of supervision as required by subdivision 1 of this subsection with respect to agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to assure that the third party contracting under subdivision 3 of this subsection is performing the functions required under subdivision 1 of this subsection and shall take action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- a. The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

b. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under subdivision 3 of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

5. An insurer that contracts with a third party pursuant to subdivision 3 of this subsection and that complies with the requirements to supervise in subdivision 4 of this subsection shall have fulfilled its responsibilities under subdivision 1 of this subsection.

6. An insurer, agent or independent agency is not required by subdivisions 1 or 2 of this subsection to:

- a. Review, or provide for review of, all agent-solicited transactions; or
- b. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer, agent or independent agency.

7. An agent or independent agency contracting with an insurer pursuant to subdivision 3 of this subsection, when requested by the insurer pursuant to subdivision 4 of this subsection, shall promptly give a certification as described in subdivision 4 or give a clear statement that it is unable to meet the certification criteria.

8. No person may provide a certification under subdivision 4 a of this subsection unless:

- a. The person is a senior manager with responsibility for the delegated functions; and
- b. The person has a reasonable basis for making the certification.

E. Compliance with the National Association of Securities Dealers Conduct Rules

(http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element_id=1159000466)

pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the commission's ability to enforce the provisions of this chapter.

14 VAC-5-45-50. Severability.

If any provision of this chapter, or its application to any person or circumstance is for any reason held to be invalid by a court, the remainder of this chapter and the application of the provisions to other persons or circumstances shall not be affected.